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JUL 31 1997

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC Docket #96-98
~~CCB/CPD 97-30~~

In the Matter of)	
)	
Request by ALTS for Clarification of the Commission's)	CCB/CPD 97-30
Rules Regarding Reciprocal Compensation for)	
Information Service Provider Traffic)	

REPLY COMMENTS OF ACC CORP.

ACC's initial comments showed that the 1996 Act, the Commission's Interconnection Order, industry practices and contract and tariff interpretation support the position taken in the request filed by ALTS -- that an incumbent local exchange carrier ("ILEC") owes reciprocal compensation to a CLEC under Section 251(b)(5) of the 1996 Act, when an ILEC's customer calls a CLEC's ISP customer in the same local calling area. Because of the obvious anticompetitive affects of the ILECs declared intent to unilaterally (and uniformly) abrogate their contractual and tariff obligations to pay reciprocal compensation for such calls, ACC urged the Commission to promptly advise the ILECs that they cannot build their anticompetitive campaign on the basis of misstatements of FCC policy, and that the Act requires the payment of reciprocal compensation for the transport and termination of such calls to ISPs.

Nothing in the Comments filed by the ILECs changes the reality that the ILECs' efforts to adopt a highly anticompetitive policy has the single objective of maintaining their control of calls to ISPs thereby denying payments legitimately due to the CLECs for terminating such

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calls.¹ Nothing in the comments even purports to suggest that the ILECs today treat calls to ISPs as anything but local calls for all purposes except for their newly announced approach to the payment of reciprocal compensation for such calls terminated by CLECs. No ILEC comment suggests that the ILEC will change its practice of serving ISPs under their intrastate business exchange service tariffs. No comment suggests that the allocation of costs associated with such calls to the intrastate jurisdiction has been improper and that their intrastate rates, to the extent they are premised on those costs, are overstated. Finally, no RBOC has indicated any intent to withdraw or shelve any existing or proposed Internet access service because they had failed to meet the requirements of Section 271 and 272 of the Act and were, therefore, unlawfully offering such services if the Commission determined that the calls to the ISP are interstate. What the ILECs did not say speaks volumes.

The ILECs effectively are asking this Commission to deny ISPs the benefits of local exchange competition and to deny CLECs revenues they are entitled to under the 1996 Act for terminating the ILECs' calls. The ILECs have provided no support adequate to sustain such a dramatic change in the status quo. The Commission should promptly make that clear to the ILECs.

The Commission must not be misled by the ILECs efforts to divert the Commission's attention from the practical realities which would result from the ILECs unilateral change in policy. The ISPs in their comments fully supported the CLEC assertion that one of the clear and

¹ Ameritech's comments state that flat rated business service for ISPs is not cost efficient. In the recent *Access Charge Reform Order*, CC Docket 96-262 (released May 17, 1997), the Commission made clear that the issue of undercompensation for ISP calls should be addressed to state regulators. *Access Charge Reform Order*, para. 346.

immediate consequences of permitting the ILECs to undertake this action will be the denial of competitive choice to the ISPs,² a choice which today has provided the ISP with benefits of competition including services which in many cases are better suited to their needs over a network better adapted to their needs. This type of competition of course is the basic, underlying purpose of the 1996 Act. Confirming the ISPs' concerns, the CLECs' comments uniformly state that without compensation for terminating such traffic they would not be in a position to continue to provide that service.

Rather than address these real world issues, the ILECs choose to tilt at windmills. Despite ILECs assertions to the contrary no one is asking this Commission to in any way determine that it does not have jurisdiction over the Internet. That is not and never was an issue in ALTs' request. The full extent of the Commission's jurisdiction over the Internet and the impact of the Internet on the public switched network is a subject this Commission is examining in other proceedings. For the Commission to clarify that nothing it did in its Interconnection Order requires calls to a CLEC's ISP end user customer to be treated in any way other than the way the industry has treated calls to an ILEC's ISP customer requires no such finding.

The Commission has had two recent occasions under the 1996 Act to examine the call that an end user places to an ISP. In both cases under provisions in which it has explicit jurisdiction under the 1996 Act, it determined that the call placed on the public switched network to an ISP is severable to the service the ISP provides *after* that call terminates to the ISP. In both cases the Commission determined that these calls be treated for the purposes at issue as local

² See Comments of CompuServe Incorporated at 6; Comments of the Commercial Internet Exchange Association; Comments of America Online, Inc. at 2, 4-5, 14-16.

calls. In its Access Order, the Commission under the 1996 Act, reaffirmed its view that an ISP is an end user and not a carrier.³ In its Universal Service Order it specifically distinguished between a subscriber call to an ISP via a voice grade network, which it found to be a telecommunications service, “and the ISP service offering which is not a telecommunication service.”⁴

Having specifically addressed the nature of the call for various purposes under the 1996 Act it would be odd, at best, to treat the same call as something entirely different for purposes of reciprocal compensation under the Act. Section 51.701 of the Commission’s Interconnection rules was entirely consistent with its treatment of calls to ISPs for universal service and access charge purposes. The Eighth Circuit’s recent order, while vacating Section 51.70, as it relates to the FCC’s establishment of rates for reciprocal compensation, in no way undermines the appropriateness of the conclusion reached by the Commission as to the *definition* of the traffic for which reciprocal compensation is owed under 251(b)(5). While the Court vacated the Rule, the Commission’s analysis remains valid and consistent with the Commission’s analysis under Sections 251(g) and 254 which are clearly under the Commission’s jurisdiction.

In their comments, the ILECs argue that the Commission should apply an “end to end analysis” in order to convert the call from a local call for reciprocal compensation purposes to a call for which reciprocal compensation is not paid. That approach is fundamentally flawed. The ILECs ignore the Commission’s determination that the calls are severable for purposes of

³ *Access Charge Order* at para. 348.

⁴ *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45 (released May 8, 1997) at ¶¶ 83, 788-789.

analysis under the 1996 Act. They also ignored the fact that under the traditional end to end analysis the same result prevails because the ISP has been determined by the Commission not to be a carrier, but an end user, and the only discernible point of termination in a call to an ISP is at the local number assigned to the ISP.

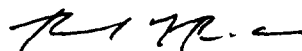
The ILECs simply have no answer to the fact that they treat these calls as local calls for all other purposes and there is no difference between the termination of such a call by an ILEC or a CLEC. While it clearly is in the ILEC's financial interest to create a new category of calls defined by the end user's business *and* whether that end user has switched local carriers, nothing in the Act, Commission policy, ILEC tariffs or contracts or industry practice supports this result.

CONCLUSION

The Commission should reject the ILECs efforts to unilaterally exempt from reciprocal compensation obligations calls to a CLEC's ISP end user customer in the same local area as the ILEC customer placing the call. Permitting ILECs to unilaterally rewrite the history of the industry's treatment of such calls without any fully developed regulatory review is simply a bold effort to smother emerging local exchange competition. Such behavior hardly comports with RBOC protestations in 271 proceedings of their genuine efforts to open local markets to competition. The ILECs should be advised that there is no basis in past or current Commission

policy to unilaterally withhold from CLECs reciprocal compensation for such calls at rates set by agreements, tariffs or negotiation.

Respectfully submitted,



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Dated: July 31, 1997

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of July 1997, copies of REPLY COMMENTS OF ACC CORP. were hand delivered to those parties marked with an asterisk. All others were served by first class mail.

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